

### REMARKS

After this Amendment, claims 1-5, 23-32, 40-42, 45 and 46 are now pending in the application. Claims 1 and 40 have been amended, new claims 45 and 46 have been added. Claims 33, 34, 43 and 44 are cancelled by this Amendment, and claims 6-22 and 35-39 were cancelled by a previous amendment. Reconsideration of the previously rejected claims and favorable action is requested in light of the above amendments and the following remarks.

Applicants thank the Examiner for the courtesies extended during the telephonic interview with Applicants' representative on December 13, 2007. The Amendment and remarks contained herein reflect the substance of discussions regarding independent claims 1 and 40, which were favorably received by the Examiner.

#### Restriction

The present Office Action dated September 18, 2007, withdrew claims 43 and 44 as being directed to a non-elected invention. By this Amendment, claims 43 and 44 are cancelled without prejudice or disclaimer.

#### Claim Rejections – 35 USC § 112

Claims 33 and 34 are rejected under 35 USC § 112, second paragraph, for lack of antecedent basis. By this Amendment, the claims are cancelled without prejudice or disclaimer. Thus, withdrawal of the rejection is requested.

#### Claim Rejections – 35 USC § 102

In the present Office Action, claims 1-5 and 23-34 are rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,602,911 to Ahmadi et al. (hereafter "Ahmadi"). Insofar as this ground for rejection applies to the present claims, Applicants respectfully traverse.

Claim 1 now recites, in part, "said adjustment tool has a proximal portion and a distal portion, and wherein, *when operably engaged*, at least *the distal portion* of said adjustment tool is disposed in a *non-parallel* orientation with respect to said plane defined by said implant device." The Office Action states the tool of Ahmadi is not co-planar to the ring disclosed therein, and that the tool of Ahmadi lies in an infinite number of planes. Applicants note

however, that claim 1 now recites a non-parallel orientation of the distal portion of the tool when operably engaged with the ring. Ahmadi fails to teach or suggest this feature, since the distal portion of the tool in Ahmadi must engage the adjustable portion of the ring in a parallel plane to that of the ring. The distinction between the engagement orientation of Ahmadi's tool and that of claim 1 is not trivial, as the non-parallel orientation of claim 1 allows for adjustments, such as percutaneous adjustments, that are not enabled by Ahmadi. The Ahmadi device would require (at best) most-unusual contortions to enable post-operative engagement of an adjustment tool to the implanted ring. Thus, Applicants respectfully submit that Ahmadi does not anticipate claim 1 and that claim 1 is allowable over the cited art of record.

Claims 2-5 and 23-34 depend directly or indirectly from claim 1 and incorporate all the features therein. Thus, claims 2-5 and 23-34 are allowable over the cited references for at least the same reasons that claim 1 is allowable and for the additional features each recites. In light of the foregoing, Applicants respectfully request withdrawal of the rejection of claims 1-5 and 23-34 under 35 U.S.C. § 102(b).

#### Claim Rejections – 35 USC § 103

Claims 40-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahmadi in view of U.S. Patent No. 6,942,694 to Liddicoat et al. (hereafter "Liddicoat"). Insofar as this ground for rejection applies to the present claims, Applicants respectfully traverse.

The USPTO has issued examination guidelines for determining obviousness under 35 U.S.C. § 103 in view of the Supreme Court opinion *KSR International Co. v. Teleflex Inc.* First an examiner must complete the basic factual inquiries of *Graham v. John Deere Co.* Next, a variety of rationales are provided in 72 Fed. Reg. 57526 (dated October 10, 2007) to determine whether the claimed invention would have been obvious to one of ordinary skill in the art. Applicants respectfully submits that these criteria have not been met for Ahmadi in view of Liddicoat as applied to claims 40-42 of the present invention.

Claim 40 recites, in part, a method including the step of "inserting the adjustment tool axially along at least a portion of the anatomic orifice or lumen to operably engage said docking mechanism in a non-parallel orientation with respect to said plane defined by said implant device." As noted above with respect to claim 1, Ahmadi fails to teach or suggest an adjustment

tool being operably engaged in a non-parallel orientation with respect to said plane defined by said implant device. Liddicoat--as noted in the Office Action--teaches approaching the heart axially along a portion of the heart valve and transmitting rotary motion at an angle for the purpose of transmitting motion changing direction of rotary motion. However, Liddicoat does not teach or suggest operably connecting an adjustment tool into a docking mechanism included in an implantable device. In fact, neither Ahmadi or Liddicoat, alone or in combination, teach a method of adjustment that allows for an adjustment tool to operably engage a docking mechanism in a non-parallel orientation to allow for adjustments, such as percutaneous adjustments. Thus, Ahmadi in view of Liddicoat fails to teach or suggest all the elements of claim 40. Thus, the Applicants respectfully submit that claim 40 is allowable over the cited references.

Claims 41 and 42 depend directly or indirectly from claim 40 and incorporate all the features therein. Thus, claims 41 and 42 are allowable over the cited references for at least the same reasons that claim 40 is allowable and for the additional features each recites. In light of the foregoing, Applicants respectfully request withdrawal of the rejection of claims 40-42 under 35 U.S.C. § 103(a).

#### New claims

Claims 45 and 46 are newly submitted. No new matter is added by these amendments. Dependent claim 45 depends from claim 40 and incorporates all the features therein. Dependant claim 46 depends from claim 1 and incorporates all the features therein. This Applicants submit that claims 45 and 46 are allowable over the cited references for at least the same reasons that claims 40 and 1, respectively, are allowable.

**CONCLUSION**

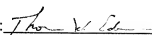
In view of the foregoing, Applicants submit that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this case might be advanced by discussing the application with Applicants' representative, in person, or over the telephone, Applicants' representatives would welcome the opportunity to do so.

EXCEPT for fees payable under 37 CFR §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 CFR §1.16 and 1.17 which may be required, including any required extension of time fees, or credit, any overpayment to deposit account No. 50-1349. This paragraph is intended to be a constructive petition for extension of time in accordance with 37 CFR §1.136(a)(3).

Respectfully submitted,

Dated: December 18, 2007

**HOGAN & HARTSON LLP**  
555 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 637-5600  
Facsimile: (202) 637-5910  
**Customer No. 24633**

By:   
Celine Jimenez Crowson  
Registration No. 40,357

Thomas W. Edman  
Registration No. 51,643